BC Treaty Commission
Submission to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources on Bill C-7

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Nanaimo, BC

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Introduction

Indian and Northern Affairs Canada (INAC) launched the First Nations Governance Act (FNGA) initiative to modernize the governance components of the Indian Act and provide First Nations people with some of the key governance tools needed to improve the quality of life in their own communities. As part of this initiative, INAC clearly stated that the proposed Act is only an interim step in the move towards self government and not a means to replace self-government negotiations.

The objective of achieving self government is a key goal in the British Columbia treaty process. The Government of Canada, Government of British Columbia, and First Nations are committed to developing a new, lasting relationship in which First Nations, through capable and effective governing institutions, can govern themselves.

As keeper of the British Columbia treaty process, the British Columbia Treaty Commission has chosen to comment on Bill C-7, not to endorse or reject the proposed Act, but to support the objective of negotiating self government. Our purpose in appearing before this committee is to ensure that Bill C-7 enables us to move forward with incremental and final agreements on self government through the BC treaty process.

What does governance mean?

Ultimately, governance is about creating reliable, transparent and accountable pathways to desired political, economic and social conditions or outcomes.

As stated by Indian and Northern Affairs Minister Robert Nault, it is not through the proposed Governance Act that this outcome can be achieved, but through negotiations, based on mutual respect, trust and understanding.

The BC treaty process

The Treaty Commission and the treaty process were established in 1992 by agreement of the governments of Canada, British Columbia and the First Nations Summit. Guided by those agreements and the 1991 *Report of the BC Claims Task Force*, the three parties set out to negotiate and implement effective, harmonized governing institutions and jurisdictional frameworks for land, resources and self government.

However, as negotiations proceeded, both the Treaty Commission and the Principals became more aware that, due to the sheer number of First Nations in the process and the complexity of the negotiations, final comprehensive treaty agreements would take longer to conclude than expected. As a result, in May 2002, the Principals conducted an intensive re-examination of the treaty process, to identify improved ways to facilitate negotiations and provide benefits sooner.

In November 2002, the Principals reviewed final options developed in these tripartite talks, and agreed to a number of new treaty-making tools that would provide for more effective and efficient negotiations. Key among these new tools is the ability to negotiate incremental treaty agreements as a means to facilitate the negotiation and ratification of final comprehensive treaty agreements, and deliver benefits sooner.

The Principals also confirmed that they would consider the need to enact legislative provisions to facilitate the implementation of certain types of incremental agreements and at the same time not dictate the outcome of the negotiation process.

Incremental governance arrangements

Now that negotiators at treaty tables are able to pursue incremental arrangements for self government it is likely that some parties may consider these types of agreements an important step in the negotiation and ratification of final treaty agreements.

Bill C-7 and incremental treaty agreements

On its face, Bill C-7 appears to be consistent with the government of Canada's mandate to use incremental agreements in the BC treaty process and to develop legislative provisions to facilitate their implementation.

The proposed Act clearly recognizes there may be a need to consider various tools to facilitate negotiations and ratification and a need for exemption from all or part of Bill C-7 to allow these tools to be developed.

The proposed Act states: "The Governor in Council may, by order made during the period of two years beginning on the coming into force of Section 4, exempt any band from the application of this Act or any of its provisions for a period specified in the order to facilitate the negotiation or ratification of a final agreement on self government."

Bill C-7, in fact, identifies specific incremental governance arrangements that necessitate exemption from the proposed Act. For example, it exempts the Band as defined in subsection 2(1) of the *Sechelt Indian Band Self-Government Act*.

However, upon closer examination, it is clear that Bill C-7 will do nothing beyond a two-year period to facilitate the implementation of incremental governance agreements for the purposes of supporting the negotiation or ratification of agreements on self government.

It is the Treaty Commission's view that in order to effectively support the negotiation or ratification of final agreements on self-government in the BC treaty process, the two-year time period in the proposed Act, be deleted or at least extended.

In this way the Governor in Council would be able to exempt any First Nation from the application of this Act or its provisions (without the need for legislation) for a period specified in the order to facilitate the negotiation or ratification of a final agreement on self government.

Bill C-7 fiscal implementation and the treaty process

The parties to the BC Treaty Process are addressing those issues of constitutional development, structure and administration of government that are covered in the provisions of Bill C-7. Consequently, there are likely to be First Nations in the BC treaty process engaged in governance development initiatives both at the treaty table and in implementing Bill C-7.

The Treaty Commission suggests that the proposed Act should clearly address and provide for the fiscal needs of such First Nations. Otherwise, there is a high likelihood that treaty negotiation resources such as negotiation support and other funding, as well as negotiation personnel will be used to support the implementation of Bill C-7.

It is the Treaty Commission's view that Bill C-7 should incorporate clear fiscal implementation provisions and funding adequate to meet the needs of First Nations.

Conclusion

It is clear that the primary purpose of Bill C-7 is to provide the tools to support and promote good governance and not to hinder the negotiation of self-government agreements.

Within the context of treaty making in BC, governance work will continue and interim governance models will be increasingly considered as incremental mandates are tested.

Therefore, in order to maintain the integrity of the BC treaty process and to allow for the implementation of Bill C-7, the Treaty Commission recommends the proposed Act be amended to:

Delete or extend the two-year window for exemptions; and

Include funding arrangements that adequately address First Nation needs.

Thank you committee members for your attention.